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March 6, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 31, 2006

Case Number: TSO-0430

This decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy (DOE) security office (the LSO) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether the Individual's access authorization should be restored.¹ For the reasons stated below, the Individual's access authorization should not be restored.

I. BACKGROUND

The present case concerns an individual who has been diagnosed with alcohol dependence, with physiological dependence. The Individual disputes this diagnosis. The events leading to this proceeding began when DOE officials received information indicating that the Individual had resumed consuming alcohol, despite the fact that he had previously been diagnosed with alcohol abuse. On February 15, 2006, a personnel security interview (PSI) of the Individual was conducted by a representative of the LSO. A transcript of this PSI appears in the Record as Exhibit 38. The Individual was then asked to submit to a forensic psychiatric examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On April 25, 2006, the DOE Psychiatrist conducted an examination of the Individual.² Exhibit 18 at 1. On May 1, 2006, the DOE

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The April 25, 2006 forensic psychiatric examination was the third such examination of the Individual conducted at the DOE's behest. The Individual had previously been examined by DOE psychiatrists on January 4, 1997, and on March 3, 1992. The DOE Psychiatrist who conducted the January 4, 1997 examination concluded that the Individual met the diagnostic criteria for alcohol abuse at that time. The DOE Psychiatrist who conducted the March 3, 1992 examination concluded that the Individual had used alcohol to excess.

Psychiatrist issued a report in which he stated that the Individual meets the criteria for alcohol dependence, with physiological dependence, as set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). Exhibit 18 at 5, 9. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by his alcohol dependence. *Id.* at 9.

After receipt of the DOE Psychiatrist's Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as . . . suffering from alcohol dependence." 10 C.F.R. § 710.8(j) (Criterion J).

The Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented five character witnesses. The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A reliable diagnosis of alcohol dependence raises significant security concerns under Criterion J. In the present case, the Individual disputes this diagnosis. However, the Individual presented no material evidence in support of this contention.³ Conversely, the DOE presented the highly

³ The Individual did not present any evidence indicating that a mental health professional or a substance abuse specialist had evaluated him and concluded that he did not meet the criteria for alcohol dependence.

probative and convincing testimony of the DOE Psychiatrist who had conducted an examination of the Individual and diagnosed him with Alcohol Dependence with Physiological Dependence.

The Individual's history strongly supports the DOE Psychiatrist's diagnosis and testimony. Specifically, the Record shows that the Individual has been arrested on four occasions for alcohol-related offenses. These arrests occurred on October 21, 1996, January 26, 1991, August 18, 1990, and November 11, 1986. Statement of Charges at 1-2.⁴ After his January 26, 1991 arrest for Driving While Intoxicated (DWI), the LSO requested that he be evaluated by a board certified psychiatrist (the 1992 Psychiatrist). The 1992 Psychiatrist evaluated the Individual and concluded that the Individual had used alcohol to excess in the past. After the Individual's arrest for Aggravated DWI on October 21, 1996, the LSO again requested that the Individual be evaluated by a board certified psychiatrist. On January 7, 1997, the DOE Psychiatrist examined the Individual and concluded that he met the DSM-IV criteria for alcohol abuse. The Individual discontinued using alcohol and was provided with an option to enter into a two year treatment program provided by his employer. The Individual satisfactorily completed this program. However, on September 15, 2005, the LSO received information indicating that Individual had resumed using alcohol. Tr. at 36. The LSO then requested that the Individual undergo an evaluation by the DOE Psychiatrist. The DOE Psychiatrist evaluated the Individual on April 25, 2006 and concluded that the Individual met the criteria for alcohol dependence, as set forth in the DSM-IV-TR. In addition, the Individual has reported that family members, including his wife and mother, as well as his physician, had expressed concerns about his alcohol use to him. Exhibit 38 at 27-28, 31; Exhibit 41 at 34-35; Exhibit 42 at 26. In light of the overwhelming and uncontroverted evidence indicating that the Individual is alcohol dependent, I find that the LSO properly invoked Criterion J.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). In the end, like all OHA Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors set forth in 10 C.F.R. § 710.7(c). The issue before me is whether the Individual has submitted sufficient evidence of his rehabilitation or reformation to resolve the security concerns raised by his alcohol dependence. In his Report of Examination, the DOE Psychiatrist opined:

⁴ On at least two of these occasions, the Individual's blood alcohol level tested at a very high level; on one occasion it was .16 percent and on the other occasion it was .19 percent. A blood alcohol level of .08 percent is considered as legal proof of intoxication in most states, including the state in which each of these arrests occurred.

A 1-year outpatient treatment program of moderate intensity, with maintenance of sobriety (abstinence from alcohol) would be necessary for [the Individual] to demonstrate adequate evidence of rehabilitation or reformation.

Exhibit 18 at 9.

The Individual testified that he does not consider himself to be alcohol dependent. Tr. at 26. The Individual further testified that he is able to “control himself” when drinking and that he is able to limit himself to one beer. Id. The Individual further testified “I feel that I am not an alcoholic.” Tr. at 27. The Individual also testified that he last consumed alcohol in May 2006.

At the hearing, the DOE Psychiatrist observed the testimony of the Individual and his five witnesses. The DOE Psychiatrist was then called to the stand. The DOE Psychiatrist testified that the Individual has not been rehabilitated or reformed from his alcohol dependence. Tr. at 43-44. The DOE Psychiatrist testified, “If you don’t admit you have a problem, it’s going to be hard to address the problem.” Tr. at 43. The DOE Psychiatrist further noted that the Individual had failed to participate in any outpatient treatment program. Tr. at 45.

I agree with the DOE Psychiatrist. The Individual obviously remains in denial about his alcohol dependence. As a result, the Individual’s alcohol dependence has basically gone untreated. Accordingly, the Individual has not shown that he understands that he has a problem with alcohol. Moreover, the DOE Psychiatrist who diagnosed the Individual with alcohol dependence has convincingly testified that the Individual is neither rehabilitated nor reformed. Accordingly, the Individual has not resolved the security concerns raised by his alcohol dependence.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criterion J. Therefore, the Individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: March 6, 2007